

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
3 SOUTHERN DIVISION

4 GARY BRICE McBAY,
5 Plaintiff,

6 VERSUS CIVIL ACTION NO: 1:07cv1205LG-RHW

7 HARRISON COUNTY, MISSISSIPPI,
8 by and through its Board of
9 Supervisors; HARRISON COUNTY
10 SHERIFF, George Payne, in his
11 official capacity; CORRECTIONS
12 OFFICER MORGAN THOMPSON,
13 acting under color of state law,
14 Defendants.

15 **DEPOSITION OF GARY BRICE MCBAY**

16 Taken at the offices of Brown Buchanan,
17 P.A., 796 Vieux Marche' Mall, Suite 1,
18 Biloxi, Mississippi, on Tuesday, August
19 18, 2009, beginning at 12:30 p.m.

20 **APPEARANCES:**

21 PATRICK R. BUCHANAN, ESQUIRE
22 Brown Buchanan, P.A.
23 796 Vieux Marche' Mall, Suite 1
24 Biloxi, Mississippi 39530
25 ATTORNEY FOR PLAINTIFF

26 JOE C. GEWIN, ESQUIRE
27 HALEY BROOM, ESQUIRE
28 Dukes, Dukes, Keating & Faneca, P.A.
29 2909 13th Street, Sixth Floor
30 Gulfport, Mississippi 39501
31 ATTORNEYS FOR GEORGE PAYNE, JR.



1 Q. The bottom paragraph on this page, it
2 says, With regard to his behavioral status, the
3 patient reported he is more irritable and easily
4 frustrated.

5 You've had a pretty quick temper your
6 whole life, haven't you?

7 A. That's not true.

8 Q. How about when you're drinking?

9 A. No, not really.

10 Q. You don't get combative?

11 A. No.

12 Q. It says, Mr. McBay acknowledged that
13 following the incident he stayed drunk for a long
14 time to avoid thinking about what had happened to
15 him. Is that a fair statement?

16 A. That's fair.

17 Q. You told him that?

18 A. That's fair.

19 Q. You didn't stay any drunker than you
20 usually did, did you?

21 A. I don't know.

22 Q. I mean, you drank a lot for a long time
23 way before this happened, didn't you?

24 A. No.

25 Q. One of your medical histories is

1 A. Who is this from?

2 Q. This is Dr. Martin's notes. That's what
3 it says at the bottom, S Martin. Page 20 we're
4 on.

5 A. Okay. I see. The question again, now?

6 Q. Is that an accurate statement?

7 MR. BUCHANAN:

8 What it says here?

9 MR. GEWIN:

10 Yes, sir.

11 MR. BUCHANAN:

12 All right. Do you know what ETOH means?

13 THE WITNESS:

14 No, I don't.

15 MR. BUCHANAN:

16 All right. You can verify what it says,
17 but if you don't know what ETOH means --

18 MR. GEWIN:

19 Q. Well, how about was drinking too much,
20 do you know what that means?

21 A. Yes.

22 Q. Okay. What period of time were you
23 drinking too much?

24 A. Afterwards.

25 Q. But not before?

1 A. No.

2 Q. Can black out, did you black out from
3 drinking before this incident at the jail?

4 A. I don't recall. I don't think so.

5 Q. Let's look on Page 21, if you would.

6 And it says, At the time of the incident had a
7 home in -- is that Canton, Texas?

8 A. Pretty much, yes.

9 Q. Not there a lot, I guess because of
10 Katrina, always being gone, living there with
11 Crystal times so many years. Can you tell how
12 many years that is? Is that one year?

13 A. I can't tell, sir.

14 Q. I can't either. It looks like it's
15 either one year or seven years.

16 A. Well, I know it ain't seven.

17 Q. But, anyway, at the time of the
18 incident, you and Crystal lived at the house that
19 your parents bought you; is that correct?

20 A. No.

21 Q. Is this a different house?

22 A. No.

23 Q. All right. Home in Canton, Texas?

24 A. Pretty much.

25 Q. When you say "pretty much," what do you

1 A. Going up there with my dad Christmas and
2 help him.

3 Q. Was he adjusting something --

4 A. Uh-huh.

5 Q. -- some kind of storm up there?

6 A. Uh-huh.

7 Q. Is that yes?

8 A. Yes, sir.

9 Q. For Eberl?

10 A. No.

11 Q. Pilot?

12 A. Pilot.

13 Q. Was this just a winter storm?

14 A. Yes, sir.

15 Q. Wind damage?

16 A. I don't recall.

17 Q. And you and your dad were -- you were
18 driving?

19 A. No, sir. I was on a train.

20 Q. Was your dad on the train with you?

21 A. No, sir.

22 Q. How did your dad go up there?

23 A. He flew.

24 Q. Was he already there?

25 A. Yes, sir.

1 Q. Are you afraid to fly?

2 A. No, sir.

3 Q. Why did you take a train?

4 A. I had never took a train.

5 Q. How long had your dad already been in
6 Washington?

7 A. I'm not sure.

8 Q. Days or weeks?

9 A. I'd say weeks.

10 Q. Okay. He didn't want you there in a
11 hurry?

12 A. That wasn't it. I wanted to take a
13 train.

14 Q. All right. And where did you catch the
15 train, in San Antone or --

16 A. Dallas.

17 Q. Dallas. So did the train, did it lay
18 over in San Antone?

19 A. That's correct.

20 Q. For how long did it lay over?

21 A. I don't know.

22 Q. Overnight?

23 A. I suppose.

24 Q. Did you have a sleeper car or just
25 coach?

1 A. Coach.

2 Q. So the train -- this is right at
3 Christmas, right?

4 A. Correct.

5 Q. So you get on the train by yourself?

6 A. Correct.

7 Q. Nobody went with you. How long does it
8 take to get from -- was it from Dallas?

9 A. Uh-huh.

10 Q. Is that yes?

11 A. Yes.

12 Q. Dallas to San Antone?

13 A. On a train?

14 Q. Yeah.

15 A. Awhile, with multiple stops.

16 Q. So was it -- apparently you started on
17 the train, then, before the day before Christmas
18 Eve?

19 A. No. It would have been that day.

20 Q. Okay. So they said we're going to stop
21 for -- do you remember how long they said they
22 were going to stop for?

23 A. No, I don't.

24 Q. Had you been drinking on the train?

25 A. Yes.

1 Q. How much had you had to drink on the
2 train?

3 A. Not much.

4 Q. Okay. So what did you do when you got
5 off the train?

6 A. Went to a bar.

7 Q. Okay. What was the name of it?

8 A. I don't recall.

9 Q. Was it near Frio Street downtown San
10 Antone?

11 A. I don't know.

12 Q. How long did you stay in the bar?

13 A. Not long.

14 Q. Thirty minutes, five hours?

15 A. No.

16 Q. Did you miss the train?

17 A. Uh-huh.

18 Q. Is that yes?

19 A. Yes, sir.

20 Q. Did you talk to people when you were
21 drinking in the bar?

22 A. I'm sure I did.

23 Q. Did anything happen, any altercation,
24 disagreement, argument?

25 A. No, no.

1 Q. Okay. Were you drinking beer?

2 A. Yes.

3 Q. Do you have any idea how many beers you
4 had on the train?

5 A. No idea, sir.

6 Q. Do you have any idea how many beers you
7 had in the bar?

8 A. No, sir.

9 Q. Did you pass out in the street?

10 A. From what I hear.

11 Q. What's the last thing -- do you remember
12 leaving the bar?

13 A. No, sir.

14 Q. Do you remember drinking in the bar?

15 A. Uh-huh.

16 Q. Is that yes?

17 A. Yes.

18 Q. And that's when everything went blank,
19 when you were drinking in the bar?

20 A. That's correct.

21 Q. And what's the first thing you remember
22 after -- you remember drinking in the bar, and
23 then is it blank?

24 A. Uh-huh.

25 Q. Is that yes?

1 A. Yes.

2 Q. What's the next thing you remember?

3 A. Waking up the next morning.

4 Q. Where were you when you woke up?

5 A. Hospital.

6 Q. Okay. In San Antone?

7 A. Correct.

8 Q. Did someone call your parents for you?

9 A. No -- well, yeah. When they released

10 me, I went into the checkout, then they called my

11 parents.

12 Q. Did anyone come to pick you up or meet

13 you in San Antone?

14 A. Taxi.

15 Q. And where did the taxi take you?

16 A. Back to my home in DeSoto.

17 Q. How long a taxi ride is that?

18 A. A while.

19 Q. Hundreds of miles?

20 A. I don't know, from here --

21 Q. How long did the trip take you?

22 A. From here to Dallas -- I mean, it would

23 be from San Antonio to Dallas, five, six hours,

24 seven.

25 Q. Okay. This is -- they're not numbered,

1 but it's the last page in this Exhibit 5. They
2 tested your blood alcohol. It said it was .507.

3 A. Okay.

4 Q. Did anybody ever tell you that?

5 A. No, sir.

6 Q. And underneath the .507 it says, Death
7 can occur at this level. Those inexperienced with
8 alcohol will have medullary paralysis. Cardiac
9 and respiratory paralysis are imminent. A few
10 heavy chronic drinkers may still be free of frank
11 coma even at this level.

12 A. Okay.

13 Q. It sounded like you had more than a few
14 beers if you had a .5 plus BAC.

15 A. Okay.

16 Q. I mean --

17 A. I don't recall.

18 Q. That's saying you almost died from it.

19 A. Okay.

20 Q. And you've told us several times how
21 your mom is wrong about you had an alcohol
22 problem.

23 A. Uh-huh.

24 Q. You still believe that?

25 A. I drank too much that night.

1 Q. That says chronic -- only chronic
2 drinkers could live through what happened to you.

3 A. Okay.

4 Q. I mean, before that night you had had a
5 good bit to drink, right?

6 A. Okay.

7 Q. Do you agree?

8 A. I suppose.

9 Q. I mean, do you or not, yes or no?

10 A. Yeah.

11 MR. GEWIN:

12 What number is that, Pat, five?

13 MR. BUCHANAN:

14 Five.

15 MR. GEWIN:

16 This is the going to be the East Texas
17 Medical Center in Tyler, Texas record, Number 6.

18 (Exhibit 6 was marked.)

19 MR. GEWIN:

20 Q. Let me see it. Do you remember going to
21 the East Texas Medical Center in Tyler, Texas?

22 A. Yes, sir.

23 Q. Okay. And according to the record, it
24 says you were admitted March 31st, 2006,
25 correct? Does that sound right?